

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DORIAN WILSON)	
Claimant)	
VS.)	
)	
THE VILLAGES, INC.)	Docket No. 251,182
Respondent)	
AND)	
)	
CGU HAWKEYE-SECURITY INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals the December 21, 2000, Award of Administrative Law Judge Brad E. Avery. In the Award, claimant was granted benefits based upon a 7 percent permanent partial impairment to the body as a whole for injuries suffered in an automobile accident on August 21, 1999. Respondent contends claimant's injuries did not result from a work accident, alleging claimant's accidental injury occurred while she was on a personal errand to Lawrence, Kansas. Claimant contends the accident occurred while on a buying trip for the children under her care as a house parent. Oral argument before the Board was held on June 20, 2001.

APPEARANCES

Claimant appeared by her attorney, George H. Pearson, III, of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Michael H. Stang of Overland Park, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record contained in the Award of the Administrative Law Judge. The Appeals Board has adopted the stipulations contained in the Award of the Administrative Law Judge. In addition, at oral argument the parties noted a stipulation regarding average weekly wage signed October 25, 2000, established claimant's average weekly wage at \$373.09. This is contrary to the \$377.77 wage utilized

by the Administrative Law Judge. The parties agreed at oral argument the stipulated wage was appropriate and it is, therefore, adopted by the Appeals Board for the purposes of this award.

ISSUES

- (1) Did claimant sustain accidental injury arising out of and in the course of her employment with respondent on the date alleged?
- (2) Did the Administrative Law Judge abuse his discretion in granting claimant an extension of her terminal dates?
- (3) Is claimant entitled to future medical care, current medical care, past medical care and unauthorized medical care at the expense of the respondent for the injuries suffered on August 21, 1999?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board finds, with the exception of the modification of the average weekly wage, that the Award of the Administrative Law Judge should be affirmed.

Claimant began working as a house parent for respondent, The Villages, Inc., on July 6, 1994. As a house parent with her husband, claimant was in charge of caring for ten juveniles. Claimant's responsibilities included maintaining a budget, operating and maintaining a van, insuring that the children had appropriate medical care, including therapy, and purchasing all the of the items necessary including schools supplies and clothes for the ten children.

On August 21, 1999, while on her way to Lawrence in the company van, claimant was involved in an automobile accident, suffering serious injuries. Respondent contends the errand claimant was on was of a personal nature, i.e., to buy fish supplies for her fish tanks. Claimant contends that she was on an errand to buy clothes and school supplies for the children. Claimant further contends that, even if the trip was for the purpose of buying fish supplies, the fish tank was used as a form of therapy for the children, as it got them involved in an activity, gave them responsibilities and was educational. The Appeals Board finds that claimant's trip to Lawrence was of a business nature and, therefore, the injuries suffered in the automobile accident were compensable.

At the time of regular hearing, terminal dates were established by the Administrative Law Judge, with claimant's being July 3 and respondent's being August 2, 2000. Respondent requested an extension of its terminal date to August 10, 2000, with the

original request for the purpose of taking the deposition of Sylvia Crawford. The Order by the Administrative Law Judge granting the extension to August 10, 2000, specifically names the taking of the deposition of Sylvia Crawford as the reason. For reasons unknown, respondent substituted Jesse Heithaus in place of Sylvia Crawford.

Mr. Heithaus's deposition was originally scheduled for July 14 and then rescheduled to August 5, but when he failed to show it was again rescheduled and ultimately taken August 9, 2000. The reason for taking Mr. Heithaus's deposition was not originally made clear to claimant's attorney. However, at the time of the deposition, Mr. Heithaus testified that the trip by claimant and her husband to Lawrence was for the purpose of buying supplies at a fish store and was of a personal nature. His testimony apparently caught both claimant and her attorney by surprise. Claimant's attorney filed a request on August 21 for an extension of her terminal date in order to take the deposition testimony of witnesses to rebut Mr. Heithaus's allegations. The Administrative Law Judge granted claimant's request, and the depositions of Danielle Miller and Janice Zander were then taken on September 8 and September 15, 2000, respectively. Both Ms. Miller and Ms. Zander were critical of Mr. Heithaus, alleging he was not a good person and was dishonest.

K.S.A. 1999 Supp. 44-523 allows for extensions of terminal dates if an employee is being paid temporary or permanent total disability compensation, for the medical examination of the claimant under certain circumstances and "on application for good cause shown."

Respondent contends claimant failed to show good cause for an extension of terminal dates. The Appeals Board disagrees. It is obvious the testimony of Mr. Heithaus came as a surprise. While it is true claimant could have taken the deposition of either Ms. Miller or Ms. Zander or both prior to the conclusion of her terminal date, there would have been no reason to take that testimony until the testimony of Mr. Heithaus was provided. K.A.R. 51-3-8 states that an administrative law judge shall not be bound by the rules of civil procedure. All parties shall be given reasonable opportunity to be heard. The Appeals Board finds that claimant has shown good cause for an extension of her terminal date and the decision by the Administrative Law Judge to grant same was appropriate under these circumstances.

As the only impairment rating in the record is the 7 percent whole person impairment of Sergio Delgado, M.D., and as the parties have not disputed that particular finding, the Appeals Board affirms the Award by the Administrative Law Judge granting claimant a 7 percent impairment to the body as a whole for the injuries suffered on August 21, 1999.

The Appeals Board further finds that the issues dealing with claimant's entitlement to past, present, future and unauthorized medical all hinge on the question of whether claimant suffered accidental injury arising out of and in the course of her employment, and

that the Award by the Administrative Law Judge granting those benefits should also be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Brad E. Avery dated December 21, 2000, should be, and is hereby, modified as to the claimant's average weekly wage, but affirmed as to all other issues.

An award is granted in favor of the claimant, Dorian Wilson, and against the respondent, The Villages, Inc., and its insurance carrier, CGU Hawkeye-Security Insurance Company, for an injury occurring on August 21, 1999, for a 7 percent impairment to the body as a whole based upon an average weekly wage of \$373.09.

Claimant is entitled to 29.05 weeks permanent partial disability compensation at the rate of \$248.74 per week totaling \$7,225.90. As of the date of this award, all sums are due and owing and ordered paid in one lump sum, minus any amounts previously paid.

IT IS SO ORDERED.

Dated this ____ day of July 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: George H. Pearson, III, Topeka, KS
Michael H. Stang, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director